NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

CHAPTER 8
UNDERGROUND STORAGE TANKS

PART 211
UNDERGROUND STORAGE TANK REGULATIONS

****** 324.21101 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21101 Definitions; applicability of certain authority.

Sec. 21101. As used in this part:

(a) "Department" means the department of natural resources, underground storage tank division.

(b) "Fund" means the underground storage tank regulatory enforcement fund created in section 21104.

(c) "Local unit of government" means a municipality, county, or governmental authority or any combination of municipalities, counties, or governmental authorities.

(d) "Natural gas" means natural gas, synthetic gas, and manufactured gas.

(e) "Operator" means a person who is presently, or was at the time of a release, in control of or responsible for the operation of an underground storage tank system.

(f) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(g) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances, and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(h) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subparagraphs (*i*) to (*xvi*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system with a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21102 Underground storage tank system; registration or renewal of registration; exemption; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; registration fee; deposit of fees; rules; exemption; notification of closure or removal; continuation of fees.

Sec. 21102. (1) A person who is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person who is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) The department shall accept the registration or renewal of registration of an underground storage tank system under this section only if the owner of the underground storage tank system pays the registration fee specified in subsection (8).

(4) Except as otherwise provided in subsections (5) and (6), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 3 or of the removal of an underground storage tank system from service.

(5) A person who is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection

is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(6) Except as otherwise provided in section 21103(2), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(7) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of registration or notification of change to the local unit of government where the underground storage tank system is located.

(8) Except as provided in section 21104(3), the owner of an underground storage tank system shall, upon registration or renewal of registration, pay a registration fee of $100.00 for each underground storage tank included in that underground storage tank system. The department shall deposit all registration fees it collects into the fund.

(9) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(10) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department. The owner of an underground storage tank system shall continue to pay registration fees on underground storage tanks that have been closed or removed until notification of the closure or removal is provided on the required form pursuant to these rules.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21103 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21103 Registration forms; suspected or confirmed release from system; notice; supplementary information.

Sec. 21103. (1) The registration required by section 21102(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department within 24 hours and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system and the resulting findings.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21104 Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; suspension of registration fee; notice of balance in fund.

Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used only by the department to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, pertaining to the delivery and dispensing operations of regulated substances.

(3) Notwithstanding section 21102(8), if at the close of any fiscal year the amount of money in the fund exceeds $8,000,000.00, the department shall not collect a registration fee for the following year from existing underground storage tank systems. After the registration fee has been suspended under this subsection, it shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than $4,000,000.00.

(4) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21105 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21105 Collection and evaluation of information; report.

Sec. 21105. The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21106 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21106 Rules.

Sec. 21106. The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21107 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21107 Maintaining pollution liability insurance; limits.

Sec. 21107. A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than $1,000,000.00 per occurrence.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21108 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21108 Enforcement of part and rules.

Sec. 21108. (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may, at an hour reasonable under the circumstances involved, enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises, and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system standards, establishing timetables for the replacement of equipment, and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21109 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21109 Additional safeguards; resolution; enactment or enforcement of certain ordinances prohibited.

Sec. 21109. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21110 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21110 Prohibited conduct.

Sec. 21110. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21111 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21111 Deferments.

Sec. 21111. The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21112 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21112 Violation; misdemeanor; penalty; civil fine.

Sec. 21112. (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than $5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21113 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21113 Repeal of part.

Sec. 21113. This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 213
LEAKING UNDERGROUND STORAGE TANKS

324.21301 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to meanings of words and phrases.

Popular name: Act 451

Popular name: NREPA

324.21301a Purpose and applicability of part.

Sec. 21301a. (1) This part is intended to provide remedies for sites posing a threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in the amendatory act that added this section only apply to violations of this part that occur after April 13, 1995.

(2) The changes in liability that are provided for in the amendatory act that added this subsection shall be given retroactive application.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21301b Actions governed by provisions in part; changes in corrective action.

Sec. 21301b. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995.

(b) An administrative order that was issued on or before May 1, 1995.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(d) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(2) Notwithstanding subsection (1), upon request of a person who has not completed implementing corrective actions under this part, the department shall approve changes in corrective action to be consistent with sections 21304a, 21308a, 21309a, and 21311a.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21302 Definitions; B to L.

Sec. 21302. As used in this part:

(a) “Biota” means the plant and animal life in an area affected by a corrective action plan.

(b) “Consultant” means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542.

(c) “Contamination” means the presence of a regulated substance in soil or groundwater.

(d) “Corrective action” means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(e) “De minimis spill” means a spill of petroleum as that term is described in section 21303(d)(*ii*) that contaminates not more than 20 cubic yards of soil per underground storage tank or 50 cubic yards of soil per location, in which groundwater has not been affected by the spill, and which is abated pursuant to section 21306.

(f) “Free product” means a regulated substance in a liquid phase equal to or greater than 1/8 inch of

measurable thickness, that is not dissolved in water, and that has been released into the environment.

(g) "Groundwater" means water below the land surface in the zone of saturation.

(h) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker c; and other fuels when used as substitutes for 1 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(i) "Local unit of government" means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21303 Definitions; O to V.

Sec. 21303. As used in this part:

(a) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system and who is liable under part 201.

(b) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 201.

(c) "RBCA" means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95, which is hereby incorporated by reference.

(d) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6939e.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(e) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(f) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the cleanup criteria for unrestricted residential use under this part.

(g) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release.

(h) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(i) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(j) "Vadose zone" means the zone between the land surface and the water table, or zone of saturation. Vadose zone is also known as an unsaturated zone or a zone of aeration.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21304 Liability of owner or operator not limited or removed; owner or operator as or employing consultant.

Sec. 21304. (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator except as specifically provided for in this part.

(2) Notwithstanding any other provision in this part, if an owner or operator is a consultant or employs a consultant, this part does not require the owner or operator to retain an outside consultant to perform the responsibilities required under this part. Those responsibilities may be performed by an owner or operator who is a consultant or by a consultant employed by the owner or operator.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21304a Corrective action activities; conduct; manner; establishment of cleanup criteria; carcinogenic risk from regulated substance; cleanup criterion for groundwater differing from certain standards; response activities by owner or operator of underground storage tank.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment.

(2) Subject to subsections (3) and (4), the department shall establish cleanup criteria for corrective action activities undertaken under this part using the process outlined in RBCA. The department shall utilize only reasonable and relevant exposure assumptions and pathways in determining the cleanup criteria.

(3) If a regulated substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the department and the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If a cleanup criterion for groundwater differs from either (a) the state drinking water standard

established pursuant to section 5 of the safe drinking water act, Act No. 399 of the Public Acts of 1976, being section 325.1005 of the Michigan Compiled Laws, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the cleanup criterion shall be the more stringent of (a) or (b) unless a consultant retained by the owner or operator determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Notwithstanding any other provision of this part, if a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system may choose to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21304b Removal or relocation of soil.

Sec. 21304b. (1) An owner or operator shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation pursuant to parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the cleanup criteria established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) An owner or operator shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being moved off-site from, moved to, or relocated on-site at a site where corrective actions will occur, the soil shall not be removed without the prior approval of the department.

(6) If soil is being relocated in a manner not addressed by subsection (5), the owner or operator of the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(7) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(8) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21305 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to promulgation of administrative rules.

Popular name: Act 451

Popular name: NREPA

324.21306 Repealed. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Compiler's note: The repealed section pertained to de minimis spills, removal or disposal of contaminated soils, duties of consultants, and eligibility to receive funding.

Popular name: Act 451

Popular name: NREPA

324.21307 Report of release; initial response actions; duties of consultant.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator shall report the release and whether free product has been discovered to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator or a consultant retained by the owner or operator shall immediately begin and expeditiously perform all of the following initial response actions:

(a) Identify and mitigate fire, explosion, and vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Identify and recover free product. If free product is identified, do all of the following:

(*i*) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the conditions at the site and in a manner that properly treats, discharges, or disposes of recovery by-products as required by law.

(*ii*) Use abatement of free product migration as a minimum objective for the design of the free product removal system.

(*iii*) Handle any flammable products in a safe and competent manner to prevent fires or explosions.

(*iv*) If a discharge is necessary in conducting free product removal, obtain all necessary permits or authorization as required by law.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard or spread and increase the cost of corrective action.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(f) If free product is discovered after the release was reported under subsection (1), report the free product discovery to the department within 24 hours of its discovery.

(3) Immediately following initiation of initial response actions under this section, the consultant retained by the owner or operator shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

(c) If free product is discovered at any time at a location not previously identified under subsection (2)(c), report the discovery within 24 hours to the department and initiate free product recovery in compliance with subsection (2)(c).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21307a Site closure report; activities requiring notification by consultant to department.

Sec. 21307a. (1) Following initiation of initial response actions under section 21307, a consultant retained by the owner or operator shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, a consultant retained by the owner or operator shall

complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, a consultant retained by the owner or operator shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21308 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to initial assessment of release.

Popular name: Act 451

Popular name: NREPA

324.21308a Initial assessment report; discovery of free product.

Sec. 21308a. (1) Within 90 days after a release has been discovered, a consultant retained by the owner or operator shall complete an initial assessment report and submit the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

(a) Results of initial response actions taken under section 21307(2).

(b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:

(*i*) The facility address.

(*ii*) The name of the facility.

(*iii*) The name, address, and telephone number of facility compliance contact person.

(*iv*) The time and date of release discovery.

(*v*) The time and date the release was reported to the department.

(*vi*) A site map that includes all of the following:

(A) The location of each underground storage tank in the leaking underground storage tank system.

(B) The location of any other underground storage tank system on the site.

(C) The location of fill ports, dispensers, and other pertinent system components.

(D) Soil and groundwater sample locations, if applicable.

(E) The locations of nearby buildings, roadways, paved areas, or other structures.

(*vii*) A description of how the release was discovered.

(*viii*) A list of regulated substances the underground storage tank system contained when the release occurred.

(*ix*) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (*viii*).

(*x*) The location of nearby surface waters and wetlands.

(*xi*) The location of nearby underground sewers and utility lines.

(*xii*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(*xiii*) Whether the underground storage tank system was emptied to prevent further release.

(*xiv*) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(*xv*) Whether vapors or free product was found and what steps were taken to abate those conditions and the current levels of vapors or free product in nearby structures.

(*xvi*) The extent to which all or part of the underground storage tank system or soil, or both, was removed.

(*xvii*) Data from analytical testing of soil and groundwater samples.

(*xviii*) A description of the free product investigation and removal if free product was present, including all of the following:

(A) A description of the actions taken to remove any free product.

(B) The name of the person or persons responsible for implementing the free product removal measures.

(C) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.

(D) The type of free product recovery system used.

(E) Whether any discharge will take place on site or off site during the recovery operation and where this

discharge will be located.

(F) The type of treatment applied to, and the effluent quality expected from, any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

(H) The quantity and disposition of the recovered free product.

(*xix*) Identification of any other contamination on the site not resulting from the release and the source, if known.

(*xx*) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination.

(*xxi*) The depth to groundwater.

(*xxii*) An identification of potential migration and exposure pathways and receptors.

(*xxiii*) An estimate of the amount of soil in the vadose zone that is contaminated.

(*xxiv*) If the on-site assessment indicates that off-site soil or groundwater may be affected, report the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release.

(*xxv*) Groundwater flow rate and direction.

(*xxvi*) Laboratory analytical data collected.

(*xxvii*) The vertical distribution of contaminants.

(c) Site classification under section 21314a.

(d) Tier I or tier II evaluation according to the RBCA process.

(e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination as necessary for preparation of the corrective action plan.

(2) If free product is discovered at a site after the submittal of an initial assessment report pursuant to subsection (1), the owner or operator, or consultant retained by the owner or operator, shall do both of the following:

(a) Perform initial response actions identified in section 21307(2)(c)(*i*) to (*iv*).

(b) Submit to the department an amendment to the initial assessment report within 30 days of discovery of the free product that describes response actions taken as a result of the free product discovery.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21309 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring report of corrective action and proposed schedule and removal and disposal of contaminated soil.

Popular name: Act 451

Popular name: NREPA

324.21309a Corrective action plan.

Sec. 21309a. (1) If initial response actions under section 21307 have not resulted in completion of corrective action, a consultant retained by an owner or operator shall prepare a corrective action plan to address contamination at the site. For corrective action plans submitted as part of a final assessment report pursuant to section 21311a after October 1, 1995, the corrective action plan shall use the process described in RBCA.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include all of the following:

(*i*) Name, telephone number, and address of the person who is responsible for operation and maintenance.

(*ii*) Operation and maintenance schedule.

(*iii*) Written and pictorial plan of operation and maintenance.

(*iv*) Design and construction plans.

(*v*) Equipment diagrams, specifications, and manufacturers' guidelines.

(*vi*) Safety plan.

(*vii*) Emergency plan, including emergency contact telephone numbers.

(*viii*) A list of spare parts available for emergency repairs.

(*ix*) Other information required by the department to determine the adequacy of the operation and maintenance plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required by subparagraphs (*i*) through (*viii*) and shall be accompanied by an explanation of the need for the additional information.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) Contingency plan to address ineffective monitoring.

(*x*) Operation and maintenance plan for monitoring.

(*xi*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*xii*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*xi*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a.

(e) A schedule for implementation of the corrective action.

(f) A financial assurance mechanism, as provided for in R 29.2161 to R 29.2169 of the Michigan administrative code, in an amount approved by the department, to pay for monitoring, operation and maintenance, oversight, and other costs if required by the department as necessary to assure the effectiveness and integrity of the corrective action.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation unless the lapse or violation is corrected to the satisfaction of the department.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property for any purpose, the owner or operator or a consultant retained by the owner or operator shall provide notice to the public by means designed to reach those members of the public directly impacted by the release and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21310 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring soil feasibility analysis and soil remedial corrective action plan.

Popular name: Act 451

Popular name: NREPA

324.21310a Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on tier I commercial or industrial criteria, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this

subsection only by the property owner or with the express written permission of the property owner. The form and content of the notice shall be subject to approval by the department. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action selected by a consultant retained by the owner or operator. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for financial assurance, monitoring, or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the property owner or with the express written permission of the property owner. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until the department determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant are subject to approval by the department and shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the property owner without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including but not limited to the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow the state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If a consultant retained by the owner or operator determines that exposure to regulated substances may be reliably restricted by a means other than a restrictive covenant and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the consultant may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the cleanup criteria identified in the corrective action plan. An ordinance that serves as an exposure control under this subsection shall include both of the following:

(a) A requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties.

(4) Notwithstanding subsections (1), (2), and (3), if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested by a consultant retained by an owner or operator and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.

(5) A person who implements corrective action activities shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of submittal of the corrective action plan, unless otherwise approved by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21311 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to groundwater contamination and related reports.

Popular name: Act 451

Popular name: NREPA

324.21311a Final assessment report; information; use of institutional controls regarding off-site migration; implementation of corrective action plan upon review and determination by department.

Sec. 21311a. (1) Within 365 days after a release has been discovered, a consultant retained by an owner or operator shall complete a final assessment report that includes a corrective action plan developed under section 21309a and submit the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

(a) The extent of contamination.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions:

(*i*) On-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances.

(*ii*) The costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances.

(*iii*) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria.

(*iv*) The time necessary to implement and complete each corrective action alternative.

(*v*) The preferred corrective action alternative based upon subparagraphs (*i*) through (*iv*) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) If the preferred corrective action alternative under subsection (1)(c)(*v*) is based on the use of institutional controls regarding off-site migration of regulated substances, the corrective action plan shall not be implemented until it is reviewed and determined by the department to be in compliance with this part.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21312 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to owner or operator of petroleum underground storage tank system, conditions, and corrective action.

Popular name: Act 451

Popular name: NREPA

324.21312a Closure report; information; confirmation of receipt by department.

Sec. 21312a. (1) Within 30 days following completion of the corrective action, a consultant retained by the owner or operator shall complete a closure report and submit the report to the department on a form created pursuant to section 21316. The report shall include, but is not limited to, the following information:

(a) A summary of corrective action activities.

(b) Closure verification sampling results.

(c) A closure certification prepared by the consultant retained by the owner or operator.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the consultant who submitted the closure report with a confirmation of the department's receipt of the report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21313 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to Type A or B cleanup.

Popular name: Act 451

Popular name: NREPA

324.21313a Incomplete report; failure to provide required submittal; penalty; computing period of time; extension of reporting deadline; contract provision for payment of fines; disposition of money collected; appeal of penalty; accrual of penalty.

Sec. 21313a. (1) Beginning on the effective date of the amendatory act that added subsection (7), except as provided in subsection (7), and except for the confirmation provided in section 21312a(2), if a report is not completed or a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than $100.00 per day for the first 7 days that the report is late.

(b) Not more than $500.00 per day for days 8 through 14 that the report is late.

(c) Not more than $1,000.00 per day for each day beyond day 14 that the report is late.

(2) For purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(4) The owner or operator may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507.

(6) An appeal of a penalty imposed under this section may be taken pursuant to section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws.

(7) A penalty shall not begin to accrue under this section unless the department has first notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21314 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to retaining consultants.

Popular name: Act 451

Popular name: NREPA

324.21314a Classification system.

Sec. 21314a. The department shall establish and implement a classification system for sites considering impacts on public health, safety, and welfare, and the environment. Notwithstanding any other provision in this part, at sites posing an imminent risk to the public health, safety, or welfare, or the environment, corrective action shall be implemented immediately. If the department determines that no imminent risk to the public health, safety, or welfare, or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department. This provision shall not be used by the department to limit the ability of a owner, operator or a consultant to submit a claim to the Michigan underground storage tank financial assurance fund, or delay payment on a valid claim to an owner, operator or consultant.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21315 Audit program.

Sec. 21315. (1) The department shall design and implement a program to selectively audit or oversee all aspects of corrective actions undertaken under this part to assure compliance with this part. The department may audit a site at any time prior to receipt of a closure report pursuant to section 21312a and within 6 months after receipt of the closure report.

(2) If the department conducts an audit under this section and the audit confirms that the cleanup criteria have been met, the department shall provide the owner or operator with a letter that describes the audit and its results. Notwithstanding section 21312a, after conducting an audit under this section, the department may issue a closure letter for any site that meets the cleanup criteria pursuant to section 21304a.

(3) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or that cleanup criteria have been met, the department may require an owner or operator to do either or both of the following:

(a) Provide additional information related to any requirement of this part.

(b) Retain a consultant to take additional corrective actions necessary to comply with this part or to protect public health, safety, or welfare, or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: NREPA

324.21316 Use of forms.

Sec. 21316. The department may create and require the use of forms to assist in the reporting requirements provided in this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21316a Delivery of regulated substance to underground storage tank as misdemeanor; penalty; notice of violation; placard; tampering with placard as misdemeanor; commencement of criminal actions.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system at any facility that is not in compliance with this part and rules promulgated under this part, and part 211 and rules promulgated under part 211. A person who knowingly delivers a regulated substance to an underground storage tank system is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(2) The department, upon discovery of a violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211 at a facility having an underground storage tank system, shall provide notification prohibiting delivery of regulated substances to such a facility by affixing a placard providing notice of the violation in plain view to the underground storage tank system.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person who knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

History: Add. 1995, Act 22, Eff. May 14, 1995.

Popular name: Act 451

Popular name: NREPA

324.21317-324.21319 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to type C cleanup, corrective action plans, and issuance of orders.

Popular name: Act 451

Popular name: NREPA

324.21319a Administrative order.

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator to take action as may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator requiring that person to perform corrective actions relating to a facility, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to whom the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day during which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) For exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person to whom an administrative order was issued under this section and who complied with the terms of the order who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement for the reasonable costs of the action plus interest and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition which shall be reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not an owner or operator or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken under the relevant order.

History: Add. 1995, Act 22, Eff. May 14, 1995.

Popular name: Act 451

Popular name: NREPA

324.21320 Corrective actions by department.

Sec. 21320. If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare, or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21321, 324.21322 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to failure to submit report within required time and liability imposed on owner or operator.

Popular name: Act 451

Popular name: NREPA

324.21323 Commencement of civil action by attorney general; return or retention of federal funds.

Sec. 21323. (1) The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) A civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

(e) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(f) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county of Ingham, for the county where the release occurred, or for the county where the defendant resides.

(3) The state may, when appropriate, return to the United States environmental protection agency any

federal funds recovered under this part. The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part, with such use subject to approval of the United States environmental protection agency.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21324 Submission of false, misleading, or fraudulent information as felony; penalty; civil fine; retroactive application; "fraudulent" and "fraudulent practice" defined; investigation and commencement of action by attorney general or county prosecutor; subpoena; enforcement; order granting immunity; failure to comply with subpoena; prosecution under other laws not precluded; apportionment of fines.

Sec. 21324. (1) Beginning April 25, 1994, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of $50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Representing that services were done or work was provided that was not done or provided.

(b) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil.

(d) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.

(f) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.

(h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.

(i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this part.

(j) Misrepresenting or falsifying the source of data regarding site conditions.

(k) Misrepresenting or falsifying the date upon which a release occurred.

(*l*) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.

(m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release.

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.

(o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has

information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(10) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21325 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to rewards.

Popular name: Act 451

Popular name: NREPA

324.21326 Information to be furnished by owner or operator; right of entry; inspections and investigations; powers of attorney general.

Sec. 21326. (1) Upon request of the department for the purpose of developing or assisting in the development of a rule, conducting an investigation, taking corrective action, or enforcing this part, the owner or operator shall furnish the department with all information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department has the right to enter at all reasonable times in or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

(b) Obtaining samples of any substance from an underground storage tank system.

(c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system, its associated equipment, or contents.

(d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party.

(e) Conducting monitoring or testing, or taking samples of soils, air, surface water, or groundwater.

(f) Taking corrective action.

(g) Inspecting and copying any records related to an underground storage tank system.

(3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness.

(4) The attorney general, on behalf of the department, may do either of the following:

(a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to implement this part.

(b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21327 Rules.

Sec. 21327. The department may promulgate rules as necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21328 Agreements.

Sec. 21328. The department may enter into an agreement with a local unit of government or a state or federal agency to aid in the implementation or enforcement of this part and to obtain financial assistance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21329 Coordination and integration.

Sec. 21329. The department shall coordinate and integrate the provisions of this part with appropriate state and federal law for purposes of administration and enforcement. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21330 Actions taken by state police.

Sec. 21330. This part does not prohibit the department of state police from taking action in any situation in which it is otherwise authorized by law to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21331 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to repeal of part.

Popular name: Act 451

Popular name: NREPA

PART 215
REFINED PETROLEUM FUND

324.21501 Meanings of words and phrases.

Sec. 21501. For purposes of this part, the words and phrases defined in sections 21502 and 21503 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.21502 Definitions; A to O.

Sec. 21502. As used in this part:

(a) "Administrator" means the fund administrator provided for in section 21513.

(b) "Advisory board" means the temporary reimbursement program advisory board established under section 21562.

(c) "Approved claim" means a claim that is approved pursuant to section 21515.

(d) "Authority" means the Michigan underground storage tank financial assurance authority created in section 21523.

(e) "Board" means the Michigan underground storage tank financial assurance policy board created in section 21541.

(f) "Board of directors" means the board of directors of the authority.

(g) "Bond proceeds account" means the account or fund to which proceeds of bonds or notes issued under this part have been credited.

(h) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the authority pursuant to this part.

(i) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment from the fund. A claim shall include, at a minimum, a completed and signed claim form and the name, address, telephone number, and federal tax identification number of the consultant retained by the owner or operator to carry out responsibilities pursuant to part 213.

(j) "Class 1 site" means a site posing the highest degree of threat to the public and environment as determined by the department, based on the classification system developed by the department pursuant to section 21314a.

(k) "Class 2 site" means a site posing the second highest degree of threat to the public and environment as determined by the department, based on the classification system developed by the department pursuant to section 21314a.

(*l*) "Consultant" means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542.

(m) "Co-pay amount" means the co-pay amount provided for in section 21514.

(n) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(o) "Department" means the department of environmental quality.

(p) "Eligible person" means an owner or operator who meets the eligibility requirements in section 21556 or 21557 and received approval of his or her precertification application by the department.

(q) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from an underground storage tank system that the owner or operator of an underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(r) "Fund" means the Michigan underground storage tank financial assurance fund created in section 21506.

(s) "Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker C; and other fuels when used as substitutes for 1 of these fuel oils.

(t) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan administrative code.

(u) "Location" means a facility or parcel of property where petroleum underground storage tank systems are registered pursuant to part 211.

(v) "Operator" means a person who was, at the time of discovery of a release, in control of or responsible for the operation of a petroleum underground storage tank system or a person to whom an approved claim has been assigned or transferred.

(w) "Owner" means a person, other than a regulated financial institution, who, at the time of discovery of a release, held a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. Owner includes a person to whom an approved claim is assigned or transferred. Owner does not include a person or a regulated financial institution who, without participating in

the management of an underground storage tank system and without being otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(x) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.21503 Definitions; P to W.

Sec. 21503. As used in this part:

(a) "Payment voucher" means a form prepared by the department that specifies payment authorization by the department to the department of treasury.

(b) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels.

(c) "Petroleum underground storage tank system" means an underground storage tank system used for the storage of petroleum.

(d) "Precertification application" means the application submitted by an owner or operator seeking the department's eligibility determination for reimbursement for the costs of corrective action from the temporary reimbursement program.

(e) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these.

(f) "Refined petroleum fund" means the refined petroleum fund established under section 21506a.

(g) "Refined petroleum product cleanup initial program" means the program established in section 21553.

(h) "Refined petroleum product cleanup program" means the refined petroleum product cleanup initial program and the program based upon the recommendations of the petroleum cleanup advisory council under section 21552(10).

(i) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(j) "Regulatory fee" means the environmental protection regulatory fee imposed under section 21508.

(k) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from a petroleum underground storage tank system into groundwater, surface water, or subsurface soils.

(*l*) "Site" means a location where a release has occurred or a threat of a release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the cleanup criteria for unrestricted residential use under part 213.

(m) "Temporary reimbursement program" means the program established in section 21554.

(n) "Underground storage tank system" means an existing tank or combination of tanks, including underground pipes connected to the tank or tanks, which is or was used to contain an accumulation of regulated substances, and is not currently being used for any other purpose, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system includes an underground storage tank that is properly closed in place pursuant to part 211 and rules promulgated under that part. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215, 217, and 219 of the hazardous liquid pipeline safety act of 1979, title II of the

pipeline safety act of 1979, Public Law 96-129, 49 USC Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank described in subparagraphs (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 USC 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system with a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(*xvii*) A wastewater treatment tank system.

(*xviii*) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(*xix*) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(*xx*) Airport hydrant fuel distribution systems.

(*xxi*) Underground storage tank systems with field-constructed tanks.

(o) "Work invoice" means an original billing acceptable to the administrator and signed by the owner or operator and a consultant that includes all of the following:

(*i*) The name, address, and federal tax identification number of each contractor who performed work.

(*ii*) The name and social security number of each employee who performed work.

(*iii*) A specific itemized list of the work performed by each contractor and an itemized list of the cost of each of these items.

(*iv*) A statement that the consultant employed a documented sealed competitive bidding process for any contract award exceeding $5,000.00.

(*v*) If the consultant did not accept the lowest responsive bid received, a specific reason why the lowest responsive bid was not accepted.

(*vi*) Upon request of the administrator, a list of all bids received.

(*vii*) Proof of payment of the co-pay amount as required under section 21514.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2006, Act 318, Imd. Eff. July 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.21504 Objectives of part.

Sec. 21504. The objectives of this part are to address certain problems associated with releases from petroleum underground storage tank systems, to promote compliance with parts 211 and 213, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.21505 Legislative findings.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. It is hereby declared to

be the purpose of this part and of the authority created by this part to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks, to preserve jobs and employment opportunities or improve the economic welfare of the people of the state, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.21506 Michigan underground storage tank financial assurance fund; creation; expenditures.

Sec. 21506. (1) The Michigan underground storage tank financial assurance fund is created in the state treasury.

(2) The state treasurer shall direct the investment of the fund. Interest and earnings from fund investments shall be credited to the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Except as provided in subsections (5) and (6), money in the fund shall be expended only as follows and in the following order of priority:

(a) To defease principal and interest due and owing on bonds issued by the authority pursuant to this part that are outstanding on the effective date of the 2004 amendatory act that amended this section.

(b) For the reasonable administrative cost of implementing this part by the department, the department of treasury, the department of attorney general, and the authority as annually appropriated by the legislature. Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) For payment of rewards under section 21549.

(d) For the interest subsidy program established in section 21522. The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year. However, 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program. If this money is not expended during the first year, this money shall be carried over for expenditure in the succeeding years of the fund's operation. Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended.

(e) For corrective action and indemnification including all of the following:

(*i*) Payments for work invoices submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(*ii*) Payments for requests for indemnification submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(*iii*) Payments for work invoices or requests for indemnification that were submitted prior to 5 p.m. on June 29, 1995 and denied by the department pursuant to this part but which denials were subsequently reversed on appeal.

(5) All revenue collected during the state fiscal years ending September 30, 2003 and September 30, 2004 from the environmental protection regulatory fee imposed under section 21508 shall be allocated and expended by the state treasurer for the purchase of United States treasury obligations in an amount sufficient, together with interest on the obligations, to implement subsection (4)(a).

(6) Upon determination by the state treasurer of the amount of money needed to satisfy all obligations listed in subsection (4), the state treasurer shall transfer all remaining money in the fund to the refined petroleum fund created in section 21506a.

(7) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4)(b). The board shall provide a copy of these recommendations to each affected department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority."

Popular name: Act 451

Popular name: NREPA

324.21506a Refined petroleum fund; creation; deposit of money or other assets; investment; money remaining at close of fiscal year; expenditures; purposes; appropriation of surplus funds to environmental protection fund.

Sec. 21506a. (1) The refined petroleum fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the refined petroleum fund. The state treasurer shall direct the investment of the refined petroleum fund. The state treasurer shall credit to the refined petroleum fund interest and earnings from refined petroleum fund investments.

(3) Money in the refined petroleum fund at the close of the fiscal year shall remain in the refined petroleum fund and shall not lapse to the general fund.

(4) Subject to subsection (5), money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) For gasoline inspection programs under both of the following:

(*i*) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.634.

(*ii*) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(b) Not more than $15,000,000.00 of the money transferred to the refined petroleum fund pursuant to section 21506(6), for the refined petroleum product cleanup initial program and for the department's administrative costs associated with the temporary reimbursement program.

(c) Not more than $45,000,000.00 of the money transferred to the refined petroleum fund pursuant to section 21506(6), for implementation of the temporary reimbursement program.

(d) For corrective actions necessary to address releases of refined petroleum products under a refined petroleum product cleanup program established by law.

(e) For the reasonable administrative costs of the department, the department of agriculture, the department of attorney general, and the department of treasury in administering the refined petroleum fund and in implementing the programs receiving revenue from the refined petroleum fund.

(5) For the state fiscal year ending September 30, 2007 only, surplus funds of $70,000,000.00 in the refined petroleum fund are hereby appropriated to the environmental protection fund created in section 503a.

History: Add. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2007, Act 67, Imd. Eff. Sept. 28, 2007.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Popular name: Act 451

Popular name: NREPA

324.21507 Repealed. 1995, Act 252, Eff. Dec. 22, 1998.

Compiler's note: The repealed section pertained to creation, investment, and disposition of the emergency response fund.

Popular name: Act 451

Popular name: NREPA

***** *324.21508 THIS SECTION IS REPEALED BY ACT 390 OF 2004 EFFECTIVE DECEMBER 31, 2010* *****

324.21508 Environmental protection regulatory fee; imposition; disposition of fees; powers and authority of department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products

sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a, at that time. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) Beginning on the effective date of the 2004 amendatory act that amended this section, all regulatory fees collected pursuant to this part shall be deposited into the refined petroleum fund created in section 21506a.

(5) Consistent with the March 31, 1995 determination by the state treasurer that revenue will not be sufficient to pay expected expenditures, and consistent with the April 3, 1995 notice of the fund administrator pursuant to subsection (6), funding is no longer available under this part for new claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995. Claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995 are not eligible for funding under this part. Work invoices and requests for indemnification received prior to 5 p.m. on June 29, 1995 may be paid to the extent money is available in the fund as provided in this part.

(6) If the state treasurer determines that fund revenues will not be sufficient to pay expected expenditures from the fund, the state treasurer shall notify the administrator, and 90 days after this notification has been given the administrator shall not accept any new work invoices or requests for indemnification. Upon receiving this notification from the state treasurer, the administrator shall notify by certified mail the owners and operators of petroleum underground storage tank systems registered under part 211 that funding under this part will no longer be available for new claims after the 90-day period has expired. However, work invoices and requests for indemnification that were submitted to the administrator prior to or during this 90-day period may be paid to the extent money is available in the fund as provided in this part.

(7) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Popular name: Act 451

Popular name: NREPA

324.21509 Calculation and payment of regulatory fees; collection of regulatory fees under product exchange agreement; definition.

Sec. 21509. (1) Notwithstanding any other provision in this part, regulatory fees shall be calculated and paid upon gross or metered gallons with respect to all “light” petroleum products. With respect only to “heavy” petroleum products (No. 4, No. 5, No. 6 residual oils), regulatory fees shall be calculated and paid upon net or temperature-corrected gallons.

(2) Notwithstanding any other provision in this part, if a person receives refined petroleum products in this state for resale in this state or consumption in this state pursuant to a product exchange agreement, the department of treasury shall collect the regulatory fees from that person. As used in this subsection, “product exchange agreement” means an agreement between buyers and sellers of refined petroleum products in which

refined petroleum products in bulk quantity are made available to a person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21510 Eligibility of owner or operator to receive money from fund or bond proceeds account for corrective action or indemnification.

Sec. 21510. (1) Except as provided in section 21521, an owner or operator is eligible to receive money from the fund or bond proceeds account for corrective action or indemnification only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after July 18, 1989.

(b) The petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently, in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part.

(c) The owner or operator or a consultant retained by the owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

(d) The owner or operator is not the United States government.

(e) The work invoice or request for indemnification is submitted to the administrator pursuant to this part and the rules promulgated under this part on or before 5 p.m., June 29, 1995.

(f) The claim is not for a release from an underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act.

(2) The owner or operator may receive money from the fund or bond proceeds account for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a petroleum underground storage tank system if all of the following requirements are satisfied:

(a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part.

(b) The release is sudden and immediate.

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.

(d) The release is reported to the department of natural resources, underground storage tank division within 24 hours of discovery of the release.

(3) Either the owner or the operator may receive money from the fund or bond proceeds account under this part for an occurrence, but not both.

(4) An owner or operator who is a public utility with more than 500,000 customers in this state is ineligible to receive money from the fund or bond proceeds account for corrective action or indemnification associated with a release from a petroleum underground storage tank system used to supply petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the fund or bond proceeds account under this part for a release at a location, the owner and operator are not eligible to receive money from the fund or bond proceeds account for a subsequent release at the same location unless the owner or operator has done either or both of the following:

(a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release.

(b) Upgraded, replaced, removed, or properly closed in place all underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part.

(6) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under section 21512.

(7) An owner or operator who discovers a subsequent release at the same location as an initial release following compliance with subsection (5)(b) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, if the owner or operator pays the subsequent release co-pay amount pursuant to section 21514, and if

the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under section 21512.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996.

Popular name: Act 451

Popular name: NREPA

324.21511 Eligibility of financial institution, land contract vendor, or local unit of government to receive money from fund for corrective action or indemnification.

Sec. 21511. (1) Subject to subsection (2), a regulated financial institution or land contract vendor may receive money from the fund for corrective action or indemnification if, prior to the discovery of a release, the regulated financial institution makes a loan to an owner or operator or makes a loan to an approved claimant under the interest subsidy program, or a land contract vendor enters into a land contract with the owner, and subsequently the regulated financial institution or the land contract vendor takes title or assumes ownership of the petroleum underground storage tank system or the property on which it is located by foreclosure, acceptance of a deed in lieu of foreclosure, or forfeiture.

(2) A regulated financial institution or land contract vendor that meets the requirements of subsection (1) may receive money from the fund if the release was discovered on or after July 18, 1989, and upon taking title to or assuming ownership of the petroleum underground storage tank system or the property on which it is located the regulated financial institution or land contract vendor meets all of the following requirements:

(a) Within 24 hours of taking title or assuming ownership reports the release to the department of natural resources, underground storage tank division, if it has not already been reported.

(b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee requirements of part 211 and the rules promulgated under that part.

(c) Is not the United States government.

(d) Meets the requirements of section 21510(1)(e) and (2) through (6).

(e) Meets the requirements of section 21515.

(3) A regulated financial institution or land contract vendor meeting the requirements of subsections (1) and (2) may do 1 or more of the following:

(a) Receive money from the fund for corrective action or indemnification.

(b) Accept a transfer or assignment of an approved claim.

(c) Utilize any co-pay amount provided by the owner or operator or pay the co-pay amount specified in section 21514.

(4) The state or a local unit of government that involuntarily acquires ownership or control of an underground storage tank system or the property on which it is located through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local unit of government involuntarily acquires title or control by virtue of its governmental function may receive money from the fund as an owner or operator if the state or local unit of government meets all of the following requirements:

(a) Within 24 hours of taking title or assuming ownership reports the release to the department of natural resources, underground storage tank division, if it has not already been reported.

(b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee requirements of part 211 and the rules promulgated under that part.

(c) Is not the United States government.

(d) Meets the requirements of section 21510(1)(e) and (2) through (6).

(e) Meets the requirements of section 21515.

However, the state or a local unit of government that seeks to receive money from the fund pursuant to this subsection is not responsible for the co-pay amount.

(5) At any time after obtaining title to property pursuant to this section, a regulated financial institution or land contract vendor may sell the property on which a claim has been approved, in a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, and time shall be at a price that takes into account the property's fair market value and the costs associated with holding the property and other such relevant factors. Upon sale, a regulated financial institution or land contract vendor may retain the loan balance plus interest and reasonable costs of obtaining title and maintaining or repairing the property, and 10% of the sale price as a brokerage fee, minus the co-pay amount. Upon sale by a local unit of government, the local unit of government may retain 10% of the sale price as a brokerage fee.

(6) A regulated financial institution, land contract vendor, or local unit of government that applies for

reimbursement under this section shall enter into an agreement to repay the state, out of any excess proceeds of a sale, if any, pursuant to subsection (5). Upon a sale of the property, the new owner shall be able to accept an assignment of the approved claim pursuant to section 21516.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21512 Approval of expenditures on behalf of owner or operator; limitation; availability of fund; reduction; determination to delay implementation of schedule.

Sec. 21512. (1) Except as provided in subsection (4), the administrator shall approve expenditures for corrective action and indemnification, on behalf of an owner or operator, of not more than a total of the following amounts per claim submitted if the owner or operator has met the requirements of this part and the rules promulgated under this part:

(a) For underground storage tank systems that, on October 26, 1993, have been upgraded pursuant to part 211 and the rules promulgated under that part:

(*i*)	Claims submitted through December 31, 1995	$1,000,000.00
(*ii*)	Claims submitted from January 1, 1996 to December 31, 1996	$ 800,000.00
(*iii*)	Claims submitted from January 1, 1997 to December 31, 1997	$ 600,000.00
(*iv*)	Claims submitted from January 1, 1998 to December 22, 1998	$ 400,000.00

(b) For underground storage tank systems that, on October 26, 1993, have not been upgraded pursuant to part 211 and the rules promulgated under that part:

(*i*)	Claims submitted through December 31, 1996	$1,000,000.00
(*ii*)	Claims submitted from January 1, 1997 through December 31, 1997	$ 800,000.00
(*iii*)	Claims submitted from January 1, 1998 through December 22, 1998	$ 600,000.00

(2) Beginning December 23, 1998, the fund will not be available to provide any portion of an owner's or operator's financial responsibility requirements.

(3) The approved expenditure under subsection (1) shall be reduced by the amount of the interest subsidy paid to an owner or operator who has defaulted on a loan subsidized through the interest subsidy program established in this section.

(4) If, upon review of the study conducted under section 21547, the director, in consultation with the insurance commissioner, determines that insurance is not available to meet the owner's and operator's portion of financial responsibility requirements, or that the insurance that is available is not available for a reasonable cost, then the director may delay implementation of the schedule provided in subsection (1). Upon making such a determination, the department shall publish notice of the revised schedule. However, the revised implementation schedule shall not require the fund to provide any portion of an owner's or operator's financial responsibility requirements after December 22, 1998.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995.

Popular name: Act 451

Popular name: NREPA

324.21513 Fund administrator; employment; responsibilities.

Sec. 21513. The department shall employ a person to serve as the fund administrator. The administrator shall be responsible for processing requests for payments from the fund and approving those requests as provided in this part. Beginning February 15, 1990, the fund shall begin operating and the administrator shall begin to accept work invoices and requests for indemnification.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21514 Payment of co-pay amount by owner or operator; second release; limitation; transfer.

Sec. 21514. (1) Except as provided in subsection (2) and section 21511, an owner or operator who is eligible under section 21510 or 21511 to receive money from the fund in the event of a release is responsible for the payment of 10% of each work invoice submitted up to a maximum of $15,000.00 of corrective action or indemnification costs associated with the release. This amount or the amount provided for in subsection (2) may be referred to as the co-pay amount. An owner or operator who has paid $10,000.00 of corrective action costs on October 26, 1993 for a release in which a claim has been submitted is exempt from any additional co-pay amounts for that release.

(2) An owner or operator who is eligible to receive money from the fund in the event of a second release at a location is responsible for the payment of 30% of each work invoice up to a maximum of $45,000.00 of corrective action or indemnification costs associated with the release.

(3) An owner or operator is not eligible to receive money from the fund for more than 2 releases at a location.

(4) Upon transfer or sale of any legal, equitable, or possessory interest in property, which at the time of transfer is otherwise in compliance with this part and the rules promulgated under this part, or upon which an approved claim and the corresponding corrective action is in progress, any co-pay amount paid, by written agreement, may be transferred.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21515 Receiving money from fund or bond proceeds account for corrective action; procedures.

Sec. 21515. (1) To receive money from the fund or bond proceeds account for corrective action, the owner or operator, or a consultant retained by the owner or operator, shall follow the procedures outlined in this section and shall submit reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared under part 213 and rules promulgated under that part to the department, and shall provide other information required by the administrator relevant to determining compliance with this part.

(2) To receive money from the fund for corrective action, an owner or operator shall submit a claim to the administrator. An owner or operator shall not submit a claim until work invoices in excess of $5,000.00 of the costs of corrective action have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (2), the administrator shall make all of the following determinations:

(a) Whether the department of environmental quality, underground storage tank division has objected to payment on the claim because the work performed or proposed to be performed is not consistent with the requirements of part 213 and rules promulgated under that part.

(b) Whether the work performed is necessary and appropriate considering conditions at the site of the release.

(c) Whether the cost of performing the work is reasonable.

(d) Whether the owner or operator is eligible to receive funding under this part.

(e) Whether the consultant retained by the owner or operator has complied with section 21517.

(4) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of environmental quality, underground storage tank division that the owner or operator has met the requirements of section 21510(1)(b) and (c), the claim is considered to be approved.

(5) If the administrator determines under subsection (3) that the work invoices included with the claim are necessary and appropriate considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the claim and notify the owner or operator who submitted the claim of the approval. If the administrator determines that the work described on the work invoices submitted was not necessary or appropriate or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the claim or any portion of the work invoices submitted and give notice of the denial to the owner or operator who submitted the claim.

(6) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (5). Within 45 days after receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice complies with subsection (3).

(b) Whether the owner or operator is currently in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part for the underground storage tank system from which the

release occurred.

(7) If the administrator determines that the work invoice does not meet the requirements of subsection (6), he or she shall deny the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 21512, the administrator shall forward payment vouchers to the state treasurer within 45 days of making the determinations under subsection (6).

(9) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11) or as otherwise provided in this subsection, upon receipt of a payment voucher, the state treasurer or the authority shall make a payment jointly to the owner or operator and the consultant within 30 days if sufficient money exists in the fund or a bond proceeds account. However, the owner or operator may submit to the fund administrator a signed affidavit stating that the consultant listed on a work invoice has been paid in full. The affidavit shall list the work invoice and claim to which the affidavit applies, a statement that the owner or operator has mailed a copy of the affidavit by first-class mail to the consultant listed on the work invoice, and the date that the affidavit was mailed to the consultant. The department is not required to verify affidavits submitted under this subsection. If, within 14 days after the affidavit was mailed to the consultant under this subsection, the fund administrator has not received an objection in writing from the consultant listed on the work invoice, the state treasurer or the authority shall make the payment directly to the owner or operator. If a check has already been issued to the owner or operator and the consultant, the owner or operator may return the original check to the fund administrator along with the affidavit. If within 14 days after the affidavit was mailed to the consultant the fund administrator has not received an objection from the consultant listed on the check, the state treasurer or the authority shall reissue a check to the owner or operator. If a consultant objects to an affidavit received under this subsection, and notifies the fund administrator in writing within 14 days after the affidavit was mailed to the consultant, the fund administrator shall notify the state treasurer and the authority, and the state treasurer or the authority shall issue or reissue the check to the owner or operator and the consultant. The grounds for an objection by a consultant under this subsection must be that the consultant has not been paid in full and the objection must be made by affidavit. The state treasurer or the authority shall issue checks under this subsection within 60 days after an affidavit has been received by the fund administrator. Once payment has been made under this section, the fund is not liable for any claim on the basis of that payment.

(11) Upon direction of the administrator, the state treasurer or the authority may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are suspected violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(12) The department of environmental quality shall prepare and make available to owners and operators and consultants standardized claim and work invoice forms.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 1996, Act 181, Imd. Eff. May 3, 1996.

Popular name: Act 451

Popular name: NREPA

324.21516 Assignment or transfer of approved claim; notice.

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21515 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the fund as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the co-pay amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21517 Consultant retained by owner or operator.

Sec. 21517. (1) In order to receive money from the fund, an owner or operator shall retain a consultant to perform the responsibilities required under part 213, and the consultant shall comply with all of the following requirements:

(a) The consultant shall submit the following items for competitive bidding in accordance with procedures established by the department:

(*i*) Well drilling, including monitoring wells.

(*ii*) Laboratory analysis.

(*iii*) Construction of treatment systems.

(*iv*) Removal of contaminated soil.

(*v*) Operation of treatment systems.

(b) All bids received by the consultant shall be submitted on a standardized bid form prepared by the department.

(c) A consultant may perform work activities only if the consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the administrator prior to receiving bids from contractors.

(d) Upon receipt of bids, the consultant shall submit to the administrator a copy of all bid forms received and the bid accepted. If the lowest responsive bid was not accepted, the consultant shall provide a specific reason why the lowest responsive bid was not accepted.

(2) Bids are not required for initial response actions under section 21307.

(3) An owner or operator may request that the consultant retained by the owner or operator add qualified bidders to the list for requests for bids.

(4) After the consultant employs the competitive bidding process described in this section, the owner or operator may hire contractors directly.

(5) Upon hiring a contractor, a consultant may mark up the contractor's work invoice only if the consultant pays the contractor and does the billing.

(6) Removal of underground storage tank systems is not eligible for funding under this part. If a release is discovered during the removal, the consultant shall allow the contractor removing the underground storage tank system to complete the underground storage tank system removal.

(7) An owner or operator may receive funding under this part to implement a corrective action alternative that is not the preferred corrective action alternative only if the owner or operator pays the difference between the selected corrective action alternative and the preferred corrective action alternative.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21518 Receiving money from fund for indemnification; request for indemnification; approval; records; payment.

Sec. 21518. (1) To receive money from the fund for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator, including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness of and justification for the judgment or settlement, and work invoices which conform to the requirements of section 21503(9)(a) to (e). If the administrator determines that the owner or operator is eligible for funding under this part, is eligible for the amount requested, has paid the co-pay amount, and has not exceeded the allowable amount of expenditure provided in section 21512, and that the work invoices are reasonable in terms of cost, the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of this part. The attorney general may raise as a defense to the request any rights or defenses that were or are available to the owner or operator and, in the case of a judgment, that were not heard and ruled upon by the court. If a request for indemnification is approved by the attorney general, the administrator shall forward the approved request for indemnification to the department of treasury.

(2) The administrator shall keep records of all approved requests for indemnification.

(3) The state treasurer shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money exists in the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21519 Order of payment; insufficient money in fund; liability of state.

Sec. 21519. (1) The state treasurer shall pay payment vouchers in the order in which they are received. If there is insufficient money in the fund to make a payment, then a payment shall not be made. However, payment vouchers that are not funded may be paid if revenues of the fund become available.

(2) The fund and the state are not liable for work invoices or requests for indemnification if money in the fund is insufficient to meet these claims.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21520 Audit program.

Sec. 21520. The department shall establish an audit program to monitor compliance with this part. As part of the audit program, the department shall employ or contract with qualified individuals to provide on-site inspections of locations where there has been a release. The on-site inspectors shall assure that the preferred corrective action alternative selected by the consultant and the work performed on sites eligible for funding under this part are necessary and appropriate considering conditions at the location, and that work is performed in a cost-effective manner. The department shall annually evaluate the need for on-site inspectors, and if the department determines that they are unnecessary due to other cost containment procedures implemented by the department, the department may discontinue the on-site inspections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21521 Denial of claim, work invoice, or request for indemnification; review; approval; compliance; costs; appeal.

Sec. 21521. (1) If the administrator denies a claim or work invoice, or a request for indemnification, the owner or operator who submitted the claim, work invoice, or request for indemnification may, within 14 days following the denial, request review by the department. Upon receipt of a request for review under this subsection, the department shall forward the request to the board for a preliminary review. The board shall conduct a review of the denial and shall submit a recommendation to the department as to whether the claim, work invoice, or request for indemnification substantially complies with this part. Following review by the board, the department shall approve the claim, work invoice, or request for indemnification if the department determines that the claim, work invoice, or request for indemnification substantially complies with the requirements of this part. In making its determination, the department shall give substantial consideration to the recommendations of the board. However, the department shall not approve a claim, work invoice, or request for indemnification for a release that was discovered prior to July 18, 1989.

(2) If the department approves a claim based upon substantial compliance pursuant to subsection (1), the department may refuse to pay for costs incurred during the time the owner or operator was not in strict compliance with this part.

(3) A person who is denied approval by the department after review under subsection (1) may appeal the decision directly to the circuit court for the county of Ingham.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21522 Interest subsidy program; establishment; purpose; applications; rate; maximum loan period.

Sec. 21522. (1) The department of treasury in cooperation with the board shall establish an interest subsidy program through rules. This program shall provide for interest subsidies, upon application, to the owner or operator of a petroleum underground storage tank system who meets the applicable requirements of section 21510(1). Money in the fund shall not be used for loans but shall be used to provide interest subsidies to lenders on loans for the replacement of a petroleum underground storage tank system.

(2) Interest subsidies shall be made under this section, upon application, for the replacement of existing petroleum underground storage tank systems with petroleum underground storage tank systems that meet the requirements of subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to

6991i, for new underground storage tank systems installed after January 1, 1989, and the rules promulgated under part 211.

(3) Applications for the interest subsidy program under this section shall be submitted prior to December 22, 1998.

(4) Beginning August 1, 1993, the department of treasury shall provide all applicants who otherwise qualify for the interest subsidy program, an interest rate subsidy 1% above the 6-month United States treasury bill rate in effect at the beginning of the calendar quarter in which an owner or operator is eligible, but no more than the actual interest rate paid. The maximum loan amount that an interest rate subsidy will be provided for is $200,000.00. The maximum loan period is 10 years.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21523 Michigan underground storage tank financial assurance authority; creation; handling of funds.

Sec. 21523. The Michigan underground storage tank financial assurance authority is created as a body corporate within the department of management and budget and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department of management and budget or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21524 Authority; appointment, terms, and duties of members; vacancy; conduct of business; meetings open to public; quorum; voting; designation of representative; election of chairperson and other officers.

Sec. 21524. (1) The authority shall be governed by a board of directors consisting of the director of the department of management and budget, the director of the department of state police, and 3 residents of the state appointed by the governor with the advice and consent of the senate. The 3 appointed members shall serve terms of 3 years. However, in making the initial appointments, the governor shall designate 1 appointed member to serve for 3 years, 1 appointed member to serve for 2 years, and 1 appointed member to serve for 1 year.

(2) Upon appointment to the board of directors under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed.

(3) A vacancy on the board of directors shall be filled in the same manner as the original appointment. A vacancy shall be filled for the balance of the unexpired term. A member of the board of directors shall hold office until a successor is appointed and qualified.

(4) Members of the board of directors and officers and employees of the authority are subject to Act No. 317 of the Public Acts of 1968, being sections 15.321 to 15.330 of the Michigan Compiled Laws, and Act No. 318 of the Public Acts of 1968, being sections 15.301 to 15.310 of the Michigan Compiled Laws, as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants to fairly reflect the financial condition of the authority.

(5) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of

the time, date, and place of each meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. Three members of the board of directors constitute a quorum for the transaction of business. An action of the board of directors shall be by a majority of the votes cast. A state officer who is a member of the board of directors may designate a representative from his or her department to serve instead of that state officer as a voting member of the board of directors for 1 or more meetings.

(6) The board of directors shall elect a chairperson from among its members and may elect any other officers the board of directors considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21525 Designation of executive director; employment of experts, other officers, agents, or employees; duties of department; report; audit.

Sec. 21525. (1) The governor shall designate the executive director of the authority. The authority may employ on a permanent or temporary basis legal and technical experts, and other officers, agents, or employees, to be paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department of management and budget. The authority may delegate to 1 or more members, officers, agents, or employees any of the powers or duties of the authority as the authority considers proper.

(2) The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the director of the department of management and budget.

(3) The authority may contract with the department of management and budget for the purpose of maintaining and improving the rights and interests of the authority.

(4) The authority shall annually file with the legislature a written report on its activities of the last year. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes sold under this part.

(5) The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21526 Board of directors; powers.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.

(d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(e) With the prior consent of the director of the department of management and budget, solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(f) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(g) Invest money of the authority, at the board of directors' discretion, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.

(h) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice, payable out of any money of the authority.

(i) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(j) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21527 Bonds or notes; issuance; indebtedness, liability, or obligations of state not created; payment; expenses.

Sec. 21527. (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 21508. Bonds or notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligation of the state or be or constitute a pledge of the faith and credit of the state. All authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in implementing this part are payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21528 Bonds or notes; issuance; amount; purpose; payment; provisions; validity of signatures; sale; bonds or notes subject to other acts.

Sec. 21528. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The purposes described in section 21506(4)(a) and (e).

(b) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(c) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.

(d) The payment of interest on the bonds or notes for a period determined by the authority.

(e) The payment of all other costs or expenses of the authority incident to and necessary or convenient to implement its purposes and powers.

(2) The bonds or notes of the authority are not a general obligation of the authority but are payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the authority:

(a) Shall be authorized by resolution of the authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 20 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(*l*) May be transferable.

(m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is

determined necessary or beneficial by the authority.

(4) If a member of the board of directors or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that bond or note, the signature continues to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. An authority bond or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2009, Act 98, Imd. Eff. Sept. 24, 2009.

Popular name: Act 451

Popular name: NREPA

324.21529 Bonds or notes; issuance; amounts; purpose; application of proceeds to purchase or retirement at maturity or redemption; investment of escrowed proceeds; use by authority; refunded bonds or notes considered as paid; termination of obligation.

Sec. 21529. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and, pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this part.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest become due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21530 Bonds or notes; assurance of timely payments; costs of issuance.

Sec. 21530. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase bonds or notes, an agreement to remarket bonds or notes, an agreement to manage payment, revenue or interest rate exposure, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the bonds or notes, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, agreements to manage payment, revenue or interest rate exposure, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21531 Members of board of directors, executive director, or other officer; powers.

Sec. 21531. Within limitations that are contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board of directors, the executive director, or any other officer of the authority to do 1 or more of the following:

(a) Sell and deliver and receive payment for bonds or notes.

(b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or subject to redemption.

(c) Deliver bonds or notes, partly to refund bonds or notes and partly for any other authorized purpose.

(d) Buy issued bonds or notes and resell those bonds or notes.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the authority.

(g) Approve the terms of an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment, revenue, or interest rate exposure.

(h) Execute any power, duty, function, or responsibility of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21532 Contract with holders of bonds or notes; provisions.

Sec. 21532. A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose of all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) A provision to vest in a trustee, or a secured party, property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise that the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.

(h) A provision to provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(*i*) By mandamus or other suit, action, or proceeding to enforce the rights of the bondholders or noteholders, and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this part.

(*ii*) Bring suit upon the bonds or notes.

(*iii*) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes.

(*iv*) By action, suit, or proceeding, enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes.

(*v*) Declare the bonds or notes due and payable, and if all defaults are made good, then, as permitted by the resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21533 Pledge as valid and binding; lien.

Sec. 21533. A pledge made by the authority is valid and binding from the time the pledge is made. The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21534 Disposition of proceeds.

Sec. 21534. The proceeds of bonds or notes issued pursuant to this part shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21535 Personal liability.

Sec. 21535. A member of the authority, any person executing bonds or notes issued under this part, or any person executing any agreement on behalf of the authority is not liable personally on the bonds or notes by reason of their issuance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21536 Holders of bonds or notes; rights and remedies not limited, restricted, or impaired.

Sec. 21536. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21537 Persons authorized to invest funds; authority bonds or notes as security for public deposits.

Sec. 21537. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized security for public deposits.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21538 Property and income of authority; bonds or notes as exempt from tax.

Sec. 21538. (1) Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is for a public purpose.

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state.

(3) Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21539 Construction of part.

Sec. 21539. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21540 Rules.

Sec. 21540. The authority may promulgate rules as necessary to implement sections 21523 to 21539.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21541 Michigan underground storage tank financial assurance policy board; creation; appointment, qualifications, and terms of members; vacancy; meetings; election of chairperson and other officers; conducting business at public meeting; quorum; action by majority vote; duty of board; review and evaluation of competitive bidding process employed by consultant; removal of consultant from list; conflict of interest.

Sec. 21541. (1) The Michigan underground storage tank financial assurance policy board is created in the department of natural resources.

(2) The board shall consist of the following:

(a) The director of the department of management and budget or his or her designee.

(b) The director of the department of natural resources or his or her designee.

(c) The director of the department of state police or his or her designee.

(d) The state treasurer or his or her designee.

(e) Eight individuals appointed by the governor with the advice and consent of the senate, as follows:

(*i*) One individual representing an independent petroleum wholesale distributor-marketer trade association.

(*ii*) One individual representing a petroleum refiner-supplier trade association.

(*iii*) One individual representing a service station dealers' trade association.

(*iv*) One individual representing a truck stop operators trade association.

(*v*) One individual representing an environmental public interest organization who is not associated with any of the organizations listed in subparagraphs (*i*) to (*iv*).

(*vi*) Two individuals representing the general public who are not associated with any of the organizations listed in subparagraphs (*i*) to (*iv*).

(*vii*) One individual representing local government.

(3) An individual appointed to the board shall serve for a term of 2 years.

(4) A vacancy on the board shall be filled in the same manner as the original appointment.

(5) The first meeting of the board shall be called by the department. At its first meeting, the board shall elect from among its members a chairperson and other officers as it considers necessary. After the first meeting, a meeting of the board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members, a meeting shall be called for a date no later than 14 days after the date of receipt of the petition.

(6) The business that the board may perform shall be conducted at a public meeting of the board held in

compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(7) A majority of the members of the board constitutes a quorum for the transaction of business at a meeting of the board. Action by the board shall be by a majority of the votes cast.

(8) The board shall advise the department and the administrator on all matters related to the implementation of this part.

(9) The administrator or the department may submit to the board, for its review and evaluation, the competitive bidding process employed by a consultant pursuant to section 21517. In conducting this review and evaluation, the board may convene a peer review panel. Following completion of its review and evaluation, the board shall forward a copy of its findings to the department, the administrator, and the consultant. If the board finds the practices employed by a consultant to be inappropriate, the board may recommend that the department remove the consultant from the list of qualified consultants.

(10) Upon request of the administrator or the department, the board shall make a recommendation to the department on whether a consultant should be removed from the list of qualified consultants. Prior to making this recommendation, the board may convene a peer review panel to evaluate the conduct of the consultant with regard to compliance with this part.

(11) A member of the board shall abstain from voting on any matter in which that member has a conflict of interest.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

Popular name: Act 451

Popular name: NREPA

324.21542 List of qualified underground storage tank consultants.

Sec. 21542. (1) The department, after consultation with the board, shall prepare and annually update a list of qualified underground storage tank consultants who, based on department guidelines, are qualified to carry out the responsibilities of consultants as provided in part 213 and to oversee corrective actions. However, in preparing this list of consultants, the department is not responsible or liable for the performance of the consultants. The department shall make this list of consultants available to a person upon request.

(2) The department shall include a person on the list of qualified consultants upon application, if the person meets all of the following requirements:

(a) The person demonstrates experience in all phases of underground storage tank work, including tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure.

(b) The person has 1 or more individuals actively on staff who are certified underground storage tank professionals. Each certified underground storage tank professional shall provide a letter declaring that he or she is employed by the applicant and that the individual has an active operational role in the daily activities of the applicant.

(c) The person demonstrates that the person has or will be able to obtain, if approved, all of the following:

(*i*) Workers' compensation insurance.

(*ii*) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per occurrence.

(*iii*) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per occurrence, if not included under the professional liability errors and omissions insurance required under subparagraph (*ii*). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(*iv*) Commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

Deductibles in excess of 10% of the insurance limits provided in this subdivision, or the use of self-insurance, must be approved by the department. Insurance policies must be written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by the state. The insurance utilized must be placed with an insurer listed in A.M. Best's with a rating of no less than B+ VII.

(d) The person demonstrates compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and the regulations promulgated under that act, and the Michigan occupational safety

and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, and the rules promulgated under that act, and demonstrates that all such rules and regulations have been complied with during the person's previous corrective action activity.

(3) A person applying to be placed on the list of qualified consultants under this section shall submit an application to the department along with documentation that the person meets the requirements of subsection (2). If the person is a corporation, the person shall include a copy of its most recent annual report.

(4) After submitting an application under this section, or any time after a consultant is included on the list of qualified consultants, the person shall notify the department within 10 days of a change in any of the requirements of subsection (2), or any material change in the person's operations or organizational status that might affect the person's ability to operate as a consultant.

(5) A consultant shall be suspended or removed from the list of qualified consultants for fraud or other cause as determined by the department, including, but not limited to, failing to select and employ the most cost effective corrective action measures. As used in this subsection, “cost effective” includes a consideration of timeliness of implementation of the corrective action measures.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

Popular name: Act 451

Popular name: NREPA

324.21543 Certification as underground storage tank professional.

Sec. 21543. (1) Upon request, the department shall certify an individual as an underground storage tank professional if the individual meets the following requirements:

(a) The individual meets 1 or more of the following requirements:

(*i*) The individual is a licensed professional engineer and has 3 or more years of relevant soil corrective action experience, preferably involving petroleum underground storage tanks.

(*ii*) The individual is a certified professional geologist (CPG) or holds a similar approved designation such as a professional hydrologist or a certified groundwater professional, and has 3 or more years of relevant soil corrective action experience, preferably involving petroleum underground storage tanks.

(*iii*) The individual is able to demonstrate that he or she has 3 or more years of relevant environmental assessment and corrective action experience and 10 or more years of specific experience in relevant environmental work with increasing responsibilities. This demonstrated experience shall be documented with professional and personal references, past employment references and histories, and documentation that all requirements of the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules promulgated under that act have been met.

(b) For certifications after the effective date of the 1998 amendments to this section, the individual has received the training entitled “Risk-Based Corrective Action Applied at Petroleum Release Sites” from an American society for testing and materials certified trainer, or other similar training as approved by the department.

(2) An individual requesting to be granted certification under this section shall submit a copy of all of his or her credentials to the department along with a letter requesting consideration. The letter shall also include a statement that attests that the information being submitted is a true and accurate reflection of the individual's capabilities and qualifications. False or erroneous information contained in the documents submitted or representations made constitutes fraud on the part of the individual involved and may result in legal proceedings, revocation of certification, and permanent suspension from all activities funded by the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 438, Imd. Eff. Dec. 30, 1998.

Popular name: Act 451

Popular name: NREPA

324.21544 Rules.

Sec. 21544. The department and the department of treasury may promulgate rules necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 324.21501 et seq. of the Michigan Administrative Code.

324.21545 Rules.

Sec. 21545. By February 9, 1994, the department shall promulgate rules to implement this part. The rules shall address, at a minimum, a procedure for the fund administrator to make the determinations required under section 21515(2) and the procedures to be followed under section 21521(1) and (3).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21546 Liability; constitutionality of part.

Sec. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part does not relieve any person who may be eligible to receive money from the fund or the former emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole part shall be considered unconstitutional and invalid.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.21547 Availability and cost of environmental impairment insurance; study; report.

Sec. 21547. Not later than June 22, 1994, the department shall conduct a study to determine the availability and cost of environmental impairment insurance for owners and operators of petroleum underground storage tank systems and shall report to the legislature and the insurance commissioner on the results of this study.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21548 Knowledge of false, misleading, or fraudulent request for payment as felony or subject to civil fine; "fraudulent" or "fraudulent practice" defined; action brought by attorney general or county prosecutor; prosecutions under other laws not precluded; apportionment of fines.

Sec. 21548. (1) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of not more than $50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried,

excavated, disposed, or provided.

(b) Submitting paperwork for services done or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(f) Placing an underground storage tank system at a contaminated site where no underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent underground storage tank system with the department.

(j) Loaning to an owner or operator the co-pay amount required under section 21514 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the co-pay amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

(*l*) Inflating bills or work invoices, or both, by adding charges for work that was not performed.

(m) Submitting a false or misleading laboratory report.

(n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.

(o) Falsely characterizing the contents of an underground storage tank system for purposes of obtaining funding under this part.

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this part.

(r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this part.

(s) Falsifying a signature on a claim application or a work invoice.

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

(u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in order to obtain funding under this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this

state, the person found responsible shall repay any money obtained directly or indirectly under this part. Money owed pursuant to this section constitutes a claim and lien by the fund upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.

(10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the refined petroleum fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.21549 Providing information contributing to fine or conviction; reward.

Sec. 21549. (1) A person who provides information that materially contributes to the imposition of a civil fine against or the criminal conviction of any person under section 21548 shall be paid a reward pursuant to rules adopted by the department under subsection (6). The reward shall be the greater of 10% of the amount of the civil fine collected or $1,000.00.

(2) A person is not eligible for a reward under this section for a violation previously known to the investigating agency unless the information materially contributes to the civil judgment or criminal conviction.

(3) If there is more than 1 person who provides information pursuant to subsection (1) for a single violation, the first person to notify the investigating agency is eligible for the reward. If more than 1 notification is received on the same day, the reward shall be divided equally among those persons providing the information.

(4) Public officers and employees of the United States, the state of Michigan, the states of Wisconsin, Illinois, Indiana, and Ohio, or counties and cities in Michigan, Wisconsin, Illinois, Indiana, and Ohio are not eligible for the reward under this section unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(5) An employee of a business who provides information that the business violated this part is not eligible for a reward if the employee intentionally caused the violation.

(6) The department shall promulgate rules that establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these rules. In each case brought under section 21548, whichever office prosecuted the action shall determine whether the information materially contributed to the imposition of a civil fine or a criminal conviction.

(7) The department shall periodically publicize the availability of the rewards provided for in this section to the public.

(8) A claim for a reward under this section may be submitted only for information provided on or after July 23, 1993.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21550 Repeal of MCL 324.21508; obligation to pay off bonds or notes.

Sec. 21550. (1) Section 21508 is repealed effective December 31, 2010.

(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.21551 Reservation of money; purpose; use of money.

Sec. 21551. Notwithstanding any provision of this part, prior to December 22, 1998, the state treasurer shall reserve enough money in the fund to pay interest subsidies pursuant to section 21522, and for work invoices and requests for indemnification that were denied by the administrator, if subsequent to the denial the owner or operator requested review by the board, requested a contested case hearing, or filed a lawsuit related to the denial, and the case is still pending. This money shall be used to pay interest subsidies, and for work invoices and requests for indemnification in cases in which an owner or operator is successful in persuading the board, the department, or a court that the administrator's denial was in error.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21552 Repealed. 2006, Act 318, Eff. Dec. 31, 2006.

Compiler's note: The repealed section pertained to the refined petroleum cleanup advisory council.

Popular name: Act 451

Popular name: NREPA

324.21553 Refined petroleum product cleanup initial program; establishment; purpose.

Sec. 21553. The department shall establish a refined petroleum product cleanup initial program to conduct corrective actions associated with releases from petroleum underground storage tank systems.

History: Add. 2006, Act 321, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21554 Temporary reimbursement program; establishment.

Sec. 21554. The department shall establish a temporary reimbursement program to promote progress toward site closure of releases from petroleum underground storage tank systems by providing financial incentives for eligible persons to conduct corrective actions for those releases.

History: Add. 2006, Act 321, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21555 Temporary reimbursement program; administration; implementation; precertification application period; notice of initiation date.

Sec. 21555. The department shall administer the temporary reimbursement program and process precertification applications and subsequent work invoices submitted by eligible persons in accordance with this part. Beginning on the effective date of the amendatory act that added this section, the department shall commence implementation of the temporary reimbursement program as provided in sections 21556 and 21557. The initiation date of the first round precertification application period shall occur not later than 120 days after the effective date of the amendatory act that added this section. The department shall provide notice of the initiation date to applicable trade associations and shall provide notice through an electronic distribution list to interested persons and the department's website. Not later than 210 days after the initiation date of the first round, the department shall determine whether sufficient funding is available to implement a second round temporary reimbursement program pursuant to section 21557. If the department determines that sufficient funds are available, the department shall provide notice of the initiation date of the second round precertification application period in the same manner as the first round notification process. The initiation date of the second round precertification application period shall occur not later than 60 days after the department determines funding is available for the second round of the temporary reimbursement program.

History: Add. 2006, Act 321, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21556 First round precertification application; submission; form; date of receipt; eligibility requirements; consideration of application; time period for corrective actions;

costs considered for reimbursement; limitation; submission of work invoices; rate of reimbursement; unexpended amount held in reserve.

Sec. 21556. (1) To be considered for eligibility for reimbursement under the first round of the temporary reimbursement program, a person shall submit to the department a completed first round precertification application on a form provided by the department. A person may submit more than 1 first round precertification application if he or she possesses more than 1 approved claim for releases that meet the eligibility requirements in subsection (3)(a) to (d).

(2) To be considered for approval, first round precertification applications shall be received by the department at or before 5 p.m. on the one hundred eightieth day following the department's initiation date of the application period.

(3) In order for a person to be eligible for reimbursement under the first round of the temporary reimbursement program, the completed first round precertification application shall demonstrate all of the following:

(a) That the person was the owner or operator who submitted and had an approved claim or that the person received a valid assignment of an approved claim in accordance with section 21516.

(b) That the release for which the approved claim was obtained has not been closed pursuant to part 213.

(c) That the release for which the approved claim was obtained caused the site to be classified as a class 1 or class 2 site, based on the most recently submitted data or reports prior to May 9, 2005, or as otherwise determined by the department prior to May 9, 2005.

(d) For underground storage tank systems that are operating at the location from which the release occurred, that the owner or operator, if he or she is the applicant, is currently in compliance with the registration and fee requirements of part 211.

(4) All applications for the temporary reimbursement program shall be considered on a first-come, first-served basis. If the first round precertification application received by the department successfully demonstrates eligibility in accordance with subsections (2) and (3), the department shall approve the first round precertification application. Not more than 900 precertification applications shall be approved by the department.

(5) Only corrective action costs incurred after the date of approval of the precertification application and up to September 30, 2009 shall be considered for reimbursement by the department. Corrective action costs incurred after September 30, 2009 are not eligible for reimbursement.

(6) An eligible person may receive up to $50,000.00 or such additional amount as may be made available pursuant to section 21557(8), for approved corrective action costs for each approved precertification application.

(7) An eligible person shall submit all work invoices for which reimbursement is being sought to the department not later than December 29, 2009. An eligible person shall not submit a request for reimbursement that totals less than $3,000.00 for the costs of corrective action, except for the last reimbursement request.

(8) Eligible persons shall receive reimbursement of 80% of the amount of each approved work invoice until the maximum reimbursement amount is reached. The remaining 20% shall be considered the co-pay amount. Proof of payment of the co-pay amount is required with each work invoice submittal.

(9) Corrective actions for which reimbursement is sought shall conform to the requirements of part 213 and section 21558. Requests for reimbursement are subject to sections 21559 to 21561.

(10) Any allocated amount for reimbursement in the first round that is not expended, but subject to appeal pursuant to section 21561, shall be held in reserve until the appeal is exhausted and a final reimbursement determination is made.

History: Add. 2006, Act 321, Imd. Eff. July 20, 2006;—Am. 2008, Act 417, Imd. Eff. Jan. 6, 2009.

Compiler's note: Act 451

Popular name: NREPA

324.21557 Second round precertification application; submission; form; date of receipt; eligibility requirements; consideration of application; reimbursement of corrective action costs; allocation of remaining money; unexpended amount held in reserve.

Sec. 21557. (1) If the department determines pursuant to section 21555 that sufficient funds are available for a second round of the temporary reimbursement program, the second round shall be implemented in accordance with this section.

(2) To be considered for eligibility for reimbursement under the second round of the temporary reimbursement program, a person shall submit to the department a completed second round precertification application on a form provided by the department. A person may submit more than 1 second round

precertification application if he or she possesses more than 1 approved claim for releases that meet the eligibility requirements in this section.

(3) To be considered for approval, second round precertification applications shall be received by the department at or before 5 p.m. on the thirtieth day following the initiation date of the second round application period.

(4) In order for a person to be eligible for reimbursement under the second round of the temporary reimbursement program, the completed second round precertification application shall demonstrate all of the following:

(a) That the person was the owner or operator who submitted and had an approved claim or that the person received a valid assignment of the approved claim in accordance with section 21516.

(b) That the release for which the approved claim was obtained has not been closed pursuant to part 213.

(c) That the release for which the approved claim was obtained caused the site to be classified as a class 1 or class 2 site, based on the most recently submitted data or reports, or as otherwise determined by the department.

(d) For underground storage tank systems that are operating at the location from which the release occurred, that the owner or operator, if he or she is the applicant, is currently in compliance with the registration and fee requirements of part 211.

(5) An eligible person may receive up to $50,000.00 for approved corrective action costs for each approved second round precertification application or such additional amount as may be made available pursuant to subsection (8). If the number of precertification applications exceeds available temporary reimbursement program funding for the second round, the remaining temporary reimbursement program funds shall be allocated at $50,000.00 per location on a first-come, first-served basis except as follows:

(a) First priority shall be given to persons that received no precertification application approvals in the first round and that meet the requirements of subsections (2) to (4).

(b) If temporary reimbursement program funds remain after allocating funds under subdivision (a), second priority shall be given to persons that received precertification application approval in the first round and that submit a second round precertification application to the department for a different location that meets the requirements of subsections (2) to (4).

(6) If the second round precertification application successfully demonstrates eligibility in accordance with this section, the department shall approve the second round precertification application in accordance with subsection (5), to the extent that funding is available.

(7) The second round of the temporary reimbursement program is subject to the requirements of section 21556(5) to (10), including the co-pay requirements.

(8) If temporary reimbursement program funds remain after all allocations are made, then, upon appropriation, the remaining money shall be allocated on a prorated basis among approved first round and second round precertification applicants for reimbursement, subject to section 21556(5) to (10). The department shall notify all approved first round and second round applicants of the amount of additional reimbursement available within 14 days of the effective date of the appropriation.

(9) Any allocated amount for reimbursement that is not expended but subject to appeal, pursuant to section 21561, shall be held in reserve until the appeal is exhausted and a final reimbursement determination is made.

History: Add. 2006, Act 321, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21558 Temporary reimbursement program; retention of consultant; requirements; adding qualified bidders for requests for bids; hiring contractors; work ineligible for temporary reimbursement program.

Sec. 21558. (1) In order to receive money under the temporary reimbursement program, an eligible person shall retain a consultant to perform the corrective actions required under part 213.

(2) The consultant shall comply with all of the following requirements:

(a) The consultant shall submit the following items for competitive bidding in accordance with procedures established in this section:

(*i*) Well drilling, including monitoring wells.

(*ii*) Laboratory analysis.

(*iii*) Construction of treatment systems.

(*iv*) Removal of contaminated soil.

(*v*) Operation of treatment systems.

(b) All bids received by the consultant shall be submitted on a standardized bid form prepared by the department.

(c) A consultant may perform work activities specified in subsection (2)(a) only if the consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the department prior to receiving bids from contractors.

(d) Upon receipt of bids, the consultant shall submit to the department a copy of all bid forms received and the bid accepted.

(e) The consultant shall notify the department in writing of the bid accepted. If the lowest responsive bid was not accepted, the consultant shall provide sufficient justification to the department and receive concurrence from the department before commencing work. Failure of the department to provide a response within 21 days shall be considered as concurrence.

(3) An eligible person may request that the consultant retained by the eligible person add qualified bidders to the list for requests for bids.

(4) Upon hiring a contractor, a consultant may include a markup to the contractor's work invoices only if the consultant pays the contractor and does the billing.

(5) After the consultant employs the competitive bidding process described in this section, the owner or operator may hire contractors directly.

(6) Removal of underground storage tank systems or installation of new or upgraded equipment for the purpose of attaining compliance with part 211, or work performed for any other reason not related to the performance of part 213 corrective actions, is not eligible for temporary reimbursement program funding under this part.

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21559 Temporary reimbursement program; receipt of money for corrective action; conditions; determination by department; denial of payment of work invoice; notice of determination; records of approved precertification applications and work invoices; payment upon receipt of approved payment voucher; affidavit; liability; withholding partial payment.

Sec. 21559. (1) For an eligible person to receive money under the temporary reimbursement program for corrective action, all of the following conditions shall be met:

(a) The eligible person, and the consultant retained by the eligible person, shall follow the procedures outlined in this section and shall submit reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared under part 213 to the department, and shall provide other information required by the department relevant to determining compliance with this part and part 213.

(b) The eligible person shall submit a work invoice to the department, with an attached summary report of the work performed under the invoice and results of the work performed, including, but not limited to, laboratory results, soil boring logs, construction logs, site investigation results, and other information that may be requested by the department.

(c) Work invoices shall comply with all of the following:

(*i*) Be submitted on a standardized work invoice form provided by the department.

(*ii*) Contain complete information in accordance with the form and the requirements of this section and as requested by the department.

(*iii*) Be in an amount consistent with the requirements of section 21556.

(2) Upon receipt of a work invoice pursuant to subsection (1), the department shall make all of the following determinations:

(a) Whether the work performed is necessary and appropriate considering conditions at the site of the release.

(b) Whether the cost of performing the work is reasonable.

(c) Whether the eligible person is eligible to receive funding under this part.

(d) Whether the consultant retained by the eligible person has complied with section 21558.

(3) The department shall deny payment of a work invoice if the department determines that the corrective action work performed is not consistent with the requirements of part 213 or does not comply with the requirements of this part.

(4) Within 45 days after receipt of a work invoice, the department shall determine whether the work invoice complies with subsections (1) to (3). The department shall notify the eligible person in writing of such

a determination.

(5) The department shall keep records of approved precertification applications and work invoices. If the eligible person has not exceeded the allowable amount of expenditure provided in sections 21556 and 21557, the department shall forward an approved payment voucher to the state treasurer within 45 days after approval of the work invoice.

(6) Except as provided in subsection (7) or as otherwise provided in this subsection, upon receipt of an approved payment voucher, the state treasurer shall make a payment jointly to the eligible person and the consultant within 30 days. However, the eligible person may submit to the department a signed affidavit stating that the consultant listed on a work invoice has been paid in full. The affidavit shall list the work invoice number and precertification application to which the affidavit applies, a statement that the eligible person has mailed a copy of the affidavit by first-class mail to the consultant listed on the work invoice, and the date that the affidavit was mailed to the consultant. The department is not required to verify affidavits submitted under this subsection. If, within 14 days after the affidavit was mailed to the consultant under this subsection, the department has not received an objection in writing from the consultant listed on the work invoice, the state treasurer shall make the payment directly to the eligible person. If a check has already been issued to the eligible person and the consultant, the eligible person shall return the original check to the department along with the affidavit. If, within 14 days after the affidavit was mailed to the consultant, the department has not received an objection from the consultant listed on the check, the state treasurer shall reissue a check to the eligible person. If a consultant objects to an affidavit received under this subsection and notifies the department in writing within 14 days after the affidavit was mailed to the consultant, the department shall notify the state treasurer, and the state treasurer shall issue or reissue the check to the eligible person and the consultant. The grounds for an objection by a consultant under this subsection shall be that the consultant has not been paid in full and the objection shall be made by affidavit. The state treasurer shall issue checks under this subsection within 60 days after an affidavit has been received by the department. Once payment has been made under this section, the refined petroleum fund is not liable for any claim on the basis of that payment.

(7) The temporary reimbursement program is subject to section 21548.

(8) Upon direction of the department, the state treasurer may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are violations of section 21548 or if necessary to assure acceptable completion of the corrective actions.

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006;—Am. 2008, Act 417, Imd. Eff. Jan. 6, 2009;—Am. 2008, Act 417, Imd. Eff. Jan. 6, 2009.

Compiler's note: Act 451

Popular name: NREPA

324.21560 Assignment or transfer of approved precertification application; notice to department.

Sec. 21560. (1) An eligible person with a precertification application approved pursuant to section 21556 or 21557 for which corrective action is in progress that sells, or has sold, or transfers the property that is the subject of the approved precertification application to another person may assign or transfer the approved precertification application to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the refined petroleum fund temporary reimbursement program as an eligible person for the release which is the subject of the approved precertification application. Previous reimbursements and co-payments of the eligible person making the assignment or transfer shall be counted toward the reimbursement and co-pay amount of the person to whom the assignment or transfer is made.

(2) An eligible person assigning or transferring an approved precertification application pursuant to this section shall notify the department of the proposed assignment or transfer at least 10 days prior to the assignee's or transferee's submittal of work invoices for reimbursement.

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21561 Denial of precertification application or work invoice; request for review; review and recommendation by advisory board; appeal to circuit court.

Sec. 21561. (1) If the department denies a precertification application or a work invoice submitted under the temporary reimbursement program, the applicant who submitted the precertification application or the eligible person who submitted the work invoice may, within 14 days following the denial, request review by the department. Upon receipt of a request for review under this subsection, the department shall forward the

request to the advisory board for a preliminary review. The advisory board shall conduct a review of the denial and shall submit a recommendation to the department as to whether the precertification application or the work invoice complies with this part. Not later than 21 days following review by the advisory board, the department shall approve the precertification application or the work invoice if the department determines that the precertification application or the work invoice substantially complies with the requirements of this part. In making its determination, the department shall give substantial consideration to the recommendations of the advisory board.

(2) An eligible person or applicant who submitted a precertification application who is denied approval by the department after review under subsection (1) may appeal the decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631, directly to the circuit court for the county of Ingham.

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.21562 Temporary reimbursement program advisory board; creation; membership; vacancy; meetings; election of chairperson and other officers; compliance with open meetings act; quorum; voting; peer review panel; review of competitive bidding process; conflict of interest.

Sec. 21562. (1) The temporary reimbursement program advisory board is created. The advisory board shall conduct reviews of denied work invoices upon the request of eligible persons and provide recommendations to the department upon completion of such reviews. The advisory board shall also advise the department on all matters related to the implementation of the temporary reimbursement program.

(2) The advisory board shall consist of the following:

(a) Three individuals appointed by the governor, not more than 2 of whom are employed by state departments.

(b) Two individuals appointed by the speaker of the house of representatives.

(c) Two individuals appointed by the senate majority leader.

(3) An individual appointed to the advisory board shall serve for a term of 3 years, commencing on the initiation date of the temporary reimbursement program.

(4) A vacancy on the advisory board shall be filled in the same manner as the original appointment was made.

(5) The first meeting of the advisory board shall be called by the department. At its first meeting, the advisory board shall elect from among its members a chairperson and other officers as it considers necessary. After the first meeting, a meeting of the advisory board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members, a meeting shall be called for a date not later than 21 days after the date of receipt of the petition.

(6) The business that the advisory board may perform shall be conducted at a public meeting of the advisory board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A majority of the members of the advisory board constitute a quorum for the transaction of business at a meeting of the advisory board. Action by the advisory board shall be by a majority of the votes cast.

(8) The department may submit to the advisory board, for its review and evaluation, the competitive bidding process employed by a consultant pursuant to section 21558. In conducting this review and evaluation, the advisory board may convene a peer review panel. Following completion of its review and evaluation, the advisory board shall forward a copy of its findings to the department and the consultant. If the advisory board finds the practices employed by a consultant to be inappropriate, the advisory board may recommend that the department revoke the consultant's certification.

(9) A member of the advisory board shall abstain from voting on any matter in which that member has a conflict of interest.

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006.

Compiler's note: For abolishment of the temporary reimbursement program advisory board and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-3, compiled at MCL 324.99905.

Popular name: Act 451

Popular name: NREPA

324.21563 Temporary reimbursement program; cessation; availability of remaining funds.

Sec. 21563. (1) The temporary reimbursement program shall cease upon payment of all approved work invoices and resolution of work invoice appeals.

(2) Any temporary reimbursement program funds remaining after approved work invoices are paid, less any dollar amounts held in reserve pending resolution of work invoice appeals, shall be available for future appropriations pursuant to section 21506a(4).

(3) Any temporary reimbursement program funds remaining after resolution of all work invoice appeals shall be available for future appropriations pursuant to section 21506a(4).

History: Add. 2006, Act 322, Imd. Eff. July 20, 2006.

Compiler's note: Act 451

Popular name: NREPA